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DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY W. Hall

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A-64, May 27, 1952

Subject: FCN Treaty. Informal discussions.
Embassy despatch 13, May 6.

This continues Department's comments on the enclosures to reference despatch.

Enclosure 2 (continued)

Article XV. The Department considers that the phrase "as a general practice" (paragraph 1) would of itself allow emergency anti-dumping measures with respect to imports without 30 days notice. Accordingly it would not be necessary to refer to paragraph 4 of Article XIV insofar as anti-dumping restrictions against imports are concerned. It is assumed that the Mission's reference to paragraph 4 of Article XIV is based on its understanding that the Japanese have in mind also the question of anti-dumping restrictions which they may wish to apply against their own exports.

Article XVI. In connection with the question of control of domestic and imported products on a differential basis, the Embassy's attention is invited to paragraph 3 of the Additional Protocol to the 1948 treaty with Italy. In the Italian case, it was found that an exception of this sort was necessary in order to save Italy from possible violation of the plain terms of the treaty.

As to the "screen quota" question, it seems probable that what the Japanese have in mind is internal "screen time" regulations in conflict with the provisions of paragraph 1 which require national treatment as to the treatment accorded imported products. The screen quota procedure outlined in the GATT was necessary because that instrument also contains a broad national treatment rule like that in the treaty; and without such a procedure countries having such a system would either have to abandon the same or be in violation of the GATT. It has not

so far

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so far been necessary in any treaty negotiation to write out a comparable procedure, for the reason that countries maintaining such system have also been members of the GATT and hence automatically covered by broad terms of the general GATT exception carried in the treaty (Art. XXI, para. 3). The Japanese treaty may, therefore, present a problem of first impression. If it should be agreed to allow a Japanese screen-quota system, it would likely become necessary to formulate a special exception, as Department policy is to have no understandings about permissible derogations from the plain terms of the treaty except in the form of open agreements or exceptions incorporated into, or published along with, the public text of the treaty.

Article XVII. As to the Japanese desire to reserve their position with reference to balance-of-payments considerations in the operations of government monopolies, the Embassy's attention is invited to paragraph 10 of the Protocol to the Uruguay treaty. This protocol provision is framed in the style and manner of an explanation of the implicit meaning of the words used in the passage in question in the body of the treaty.

Enclosure 3 (thirteenth meeting)

To be commented on separately.

Enclosure 4 (fourteenth meeting)

Article XX. It may be confirmed that the GATT definition of transit is an acceptable definition for the treaty, so far as it goes. However, the GATT deals only with goods, whereas the treaty deals also with persons. The treaty does not deal with air transport, which is subject to regulation by a special type of convention. There are two ways only in which the transit article might have bearing on aircraft: (1) a crated airplane would be a

"product"

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"product" of a class with other merchandise for purposes of being freighted in transit (but note the provisions of Article XXI, paragraph 1(c)); and (2) goods and persons having transit privileges would be entitled to utilize the services of licensed air carriers.

Article XXI. The wording as found in the second sentence of Article VIII, paragraph 3, is satisfactory for the new paragraph 3.- bis.

For Embassy's information, the Department may later ask that the first sentence of the GATT reservation be quietly deleted, owing to suspicions expressed recently in the Senate as to the purposes of this sentence. The Department has not yet actually decided to do this, but wishes the Embassy to be prepared against the possible eventuality.

Enclosure 5 (fifteenth meeting)

Article XXIII. To be commented on separately.

Article XIV. No comment.

Articles XVI and XXI. Comment will be forwarded later on the specific reservations proposed by the Japanese.

Department's comments on the remainder of reference despatch will be continued in a following airgram.

S/S-CR

MAY 27 1952 P.M.

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